

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                   |   |                  |
|-------------------|---|------------------|
| In the matter of: | ) |                  |
|                   | ) |                  |
| KGCT-CD           | ) |                  |
| Nowata, Oklahoma  | ) | CSR-8870-M       |
|                   | ) | Docket No. 14-15 |
| v.                | ) |                  |
|                   | ) |                  |
| Cable One, Inc.   | ) |                  |

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 29, 2014**

**Released: May 29, 2014**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Murphy D. Boughner, licensee of Low Power Station KGCT-CD, Nowata, Oklahoma (“KGCT-CD”), has filed the above-captioned complaint against Cable One Inc. (“Cable One”) for its failure to carry KGCT-CD on its cable system serving certain unspecified communities in Nowata, Oklahoma from Cable One’s Bartlesville headend.<sup>1</sup> Cable One filed an opposition to this complaint to which KGCT-CD replied.<sup>2</sup> For the reasons discussed below, we dismiss KGCT-CD’s complaint.

**II. BACKGROUND**

2. Both the Communications Act of 1934, as amended, and the Commission’s rules require the carriage of “qualified” low power television (“LPTV”) stations in certain limited circumstances.<sup>3</sup> An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission’s rules will be considered “qualified” if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming of the LPTV station addresses local news and informational needs that are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station’s community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system’s headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas (“MSAs”) on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable

<sup>1</sup> See Complaint of Murphy D. Boughner, licensee of Low Power Station KGCT-CD, Nowata, Oklahoma, filed Jan. 17, 2014 (“Complaint”).

<sup>2</sup> See Opposition of Cable One Inc. KGCT-CD Complaint, filed Feb. 19, 2014 (“Opposition”); Reply to Opposition, filed Feb. 28, 2014 (“Reply”).

<sup>3</sup> 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

system.<sup>4</sup>

3. Under certain limited circumstances set forth in the Commission's rules, cable systems with more than 12 usable activated channels are required to carry low power television stations on their channel lineups.<sup>5</sup> Stations with 35 or fewer usable activated channels that have not filled the channel set aside for local commercial television stations must carry one "qualified" low power television station, and stations with more than 35 usable activated channels that have not filled the channel set aside for local commercial television stations must carry two "qualified" low power television stations.<sup>6</sup>

### III. DISCUSSION

4. According to its complaint, Cable One notified KGCT-CD of its intent to discontinue carriage of KGCT in August 2012.<sup>7</sup> On July 1, 2013, KGCT-CD notified Cable One in writing of KGCT-CD's intent to exercise its must carry rights. On July 31, 2013, KGCT-CD asserted that Cable One notified KGCT-CD of its refusal to carry KGCT-CD claiming that the station is not qualified due to a less than minimum signal quality level at its Bartlesville headend.<sup>8</sup>

5. KGCT-CD filed a complaint requesting mandatory carriage pursuant to Sections 76.7, 76.56, and 76.61 of the Commission's rules.<sup>9</sup> Cable One filed an opposition to the complaint again citing KGCT's failure to deliver a good quality over-the-air signal to the Bartlesville system's principal headend as required by the Commission's rules.<sup>10</sup> Cable One cites two signal test reports indicating little or no signal strength.<sup>11</sup>

6. As outlined above, Congress has identified six factors that determine whether a low power station is "qualified" and therefore entitled to carriage rights.<sup>12</sup> Because a low power television station must meet each of the six criteria required by the Act and the Commission's rules, its failure to meet just one is fatal to its request for mandatory carriage.<sup>13</sup> The record demonstrates that KGCT-CD does not deliver a good quality over-the-air signal to Cable One's principal headend, one of the six factors that must be met.

7. Nevertheless, KGCT-CD retorts that the receive antenna at Cable One's headend is not at the proper height for adequately testing signal strength, and as such KGCT's signal is blocked by a distinct hill in the path of its transmission to Cable One's antenna; furthermore, KGCT notes the antenna itself is directionally pointed away from the source of its signal and that by orienting it toward KGCT, an signal strength should increase.<sup>14</sup> However, Cable One retorts that it receives all other retransmitted off air

<sup>4</sup> 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

<sup>5</sup> Section 76.56(b)(2) provides that "[a] cable system with more than 12 usable activated channels, as defined in Section 76.5(o), shall carry local commercial television stations up to one-third of the aggregate number of usable activated channels of such system." 47 C.F.R. § 76.56(b)(2).

<sup>6</sup> 47 U.S.C. § 534(c)(1)(A); 47 C.F.R. § 76.56(b)(3).

<sup>7</sup> Complaint at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1; 47 C.F.R. §§ 76.7, 76.56 & 76.61.

<sup>10</sup> See Opposition at 1-2.

<sup>11</sup> See Opposition at Exhibit A and B.

<sup>12</sup> See 47 U.S.C. § 534(h)(2)(A)-(F) & 47 C.F.R. § 76.55(d)(1)-(6).

<sup>13</sup> See *Continental Broad. Corp. v. Jones Intercable, Inc.*, 9 FCC Rcd. 2550, 2551, ¶ 7 (CSB 1994).

<sup>14</sup> See Reply at 1-2.

television broadcast stations from the exact same receive antenna, and as such, there is no justification for moving the antenna to another height on the tower.<sup>15</sup> Second, Cable One argues it did reorient its antenna as requested by KGCT's Reply and retested the signal, only to find that KGCT's signal still does not meet the required strength.<sup>16</sup> As stated above, KGCT's failure to meet this single factor disqualifies it from carriage. Because KGCT is not able to deliver a good quality over-the-air signal, it is not a qualified LPTV station. Accordingly, for this reason, we deny the complaint of KGCT.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Sections 76.55(d) and 76.56(b)(3) of the Commission's rules, 47 C.F.R. §§ 76.55(d) & 76.56(b)(3), that the must carry complaint filed by Murphy D. Boughner, licensee of Low Power Station KGCT-CD, Nowata, Oklahoma **IS DENIED**.

9. This action is taken pursuant to authority delegated by Section 0.283 of he Commission's rules.<sup>17</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Senior Deputy Chief, Policy Division  
Media Bureau

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<sup>15</sup> See Letter from Craig A. Gilley, Counsel for Cable One Inc., to Marlene H. Dortch, Secretary, FCC, at 1 (Mar. 20, 2014).

<sup>16</sup> See *id.* at 1 & Attached Signal Strength and Quality Test.

<sup>17</sup> 47 C.F.R. § 0.283.